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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,995	09/22/2003	Joseph Birli	24063/04051	9320
7590	05/03/2007	EXAMINER DABNEY, PHYLESHA LARVINIA		
Paul E. Szabo CALFEE, HALTER & GRISWOLD, LLP Suite 1400 800 Superior Avenue Cleveland, OH 44114		ART UNIT	PAPER NUMBER 2614	
		MAIL DATE	DELIVERY MODE 05/03/2007 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/667,995	BIRLI ET AL.
	Examiner	Art Unit
	Phylesha L. Dabney	2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 1/25/07.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 6-8 and 23-71 is/are pending in the application.
- 4a) Of the above claim(s) 23-41,46,47,49,51,54,58,60,63-67,69 and 71 is/are withdrawn from consideration.
- 5) Claim(s) 6-8 is/are allowed.
- 6) Claim(s) 42-45,48,50,52,53,59,62 and 68 is/are rejected.
- 7) Claim(s) 55-57 and 70 is/are objected to.
- 8) Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 1/25/07
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 23-41,46,47,49,51,54,58,60-61,63-67,69 and 71.

DETAILED ACTION

This action is in response to the Amendment received on 25 January 2007 in which claims **6-8** and newly added claims **23-71** are pending. Claims **1-5** and **9-22** were cancelled.

Election/Restrictions

1. Newly submitted claims **23-41, 46-47, 49, 51, 54, 58, 60-61, 63-67, 69, and 71** are directed to invention(s) that are independent or distinct from the invention originally claimed for the following reasons:

The inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. As outlined in the paper dated 25 April 2006, there are 4 embodiments (Species) disclosed in the Applicant's specification.

Species I (elected invention): Figures 1-10 teaches a first embodiment of the microphone assembly for use in a mask.

Species II: Figure 11 teaches a second embodiment of a microphone assembly with an adapter for use in a mask.

Species III: Figure 12 teaches a third embodiment of a permanently attached microphone assembly for use in a mask.

Species IV: Figure 13 teaches a fourth embodiment of a separated microphone assembly for use in a mask.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims **23-41, 46-47, 49, 51, 54, 58, 60-61, 63-67, 69, and 71** are

withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 42-45, 59, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed (U.S. Patent No. 5,142,700).**

Regarding claims 42-45, Reed teaches a mask (10, 30) comprising a pass-through (44) and a microphone assembly (58), the pass through designed to pass a signal from an interior to an exterior of the mask through at least one electrical connection, the pass-through including a plurality of electrical connections, the microphone assembly at least partially mounted on an interior of the mask, the microphone assembly including a first microphone arrangement (58) and a second microphone arrangement (58), each of the microphone arrangements including first and second electrical connectors designed to be electrically connected to at least one electrical connection of the pass-through.

Regarding claim 59, Reed teaches the mask as defined in claim 42, wherein the first microphone arrangement (58) is electrically connected to a device selected from the group consisting of an intercom, a telephone, a radio unit, or a voice projection unit; the second

microphone arrangement (58) electrically connected to a device different from the device connected to the first microphone arrangement (col. 1 line 59 through col. 2 line 10).

Regarding claim 68, Reed teaches the mask as defined in claim 42, wherein the pass-through (44) is located adjacent an air supply portal (28) in the mask.

3. Claims **42-45, 48, 50, and 59** are rejected under 35 U.S.C. 102(b) as being anticipated by Reed.

Regarding claims 42-45, Reed teaches a mask (30) comprising a pass-through (10, 44) and a microphone assembly (58), the pass through designed to pass a signal from an interior to an exterior of the mask through at least one electrical connection, the pass-through including a plurality of electrical connections, the microphone assembly at least partially mounted on an interior of the mask, the microphone assembly including a first microphone arrangement (58) and a second microphone arrangement (58), each of the microphone arrangements including first and second electrical connectors designed to be electrically connected to at least one electrical connection of the pass-through.

Regarding claim 48, Reed teaches the mask as defined in claims 42, wherein at least one of the first and second microphone assemblies (58) are designed to be at least partially supported on the pass-through (10, 44).

Regarding claim 50, Reed teaches the mask as defined in claim 48, wherein both of the first and second microphone assemblies (58) are at least partially supported on the pass-through (10, 44).

Regarding claim 59, Reed teaches the mask as defined in claim 42, wherein the first microphone arrangement (58) is electrically connected to a device selected from the group consisting of an intercom, a telephone, a radio unit, or a voice projection unit; the second microphone arrangement (58) electrically connected to a device different from the device connected to the first microphone arrangement (col. 1 line 59 through col. 2 line 10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 52-53, and 62** are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed.

Regarding claims 52-53, it is implied by the reference that the microphones have connectors for providing electrical connection. In addition, Reed teaches a wiring connector structure (col. 3 lines 40-46) for connecting components to the face mask, having a second component supported on a main (first) component (fig. 2, relative to an example speaker configuration).

Since Reed does not specifically teach or restrict any connecting structure for the microphone components, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the example wiring connector structure (fig 2) disclosed by the reference for use by any other components could be used for attaching the microphone components in the invention of Reed as a means of providing electrical connection between components and the pass-through.

5. Claims 52-53, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Steelman (U.S. Patent No. 6,101,256).

Regarding claim 62, Reed does not teach or restrict the microphone arrangements to the type of microphone used.

In a similar field of endeavor (sports communication), Steelman teaches that any suitable type of well-known transducer, which would include electret, dynamic, etc., can be used to convert sound waves and improving operating characteristics (col. 3 lines 16-29). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that any type of transducer including electret, etc., can be used in the invention of Reed as taught by Steelman for improving basic characteristics and achieving the desired output and design.

Allowable Subject Matter

6. Claims 6-8 are allowed.

7. Claims **55-57 and 70** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L. Dabney whose telephone number is 571-272-7494. The examiner can normally be reached on Mondays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 571-272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
P O Box 1450
Alexandria, VA 22313-1450

Or faxed to:

(703) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.

Hand-delivered responses should be brought to:

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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April 27, 2007



PLD



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